

NOTICE OF PROPOSED ACTION

FOR ADOPTION OF REGULATIONS ESTABLISHING AND IMPLEMENTING A GREENHOUSE GASES EMISSION PERFORMANCE STANDARD FOR LOCAL PUBLICLY OWNED ELECTRIC UTILITIES

California Energy Commission
Docket No. 06-OIR-1
February 2007

The California Energy Commission ("Commission") proposes to adopt new regulations establishing a greenhouse gases emission performance standard for baseload generation powerplants and a process for calculating the emissions of greenhouse gases from baseload powerplants and enforcing the standard. The proposed actions are taken under the authority of sections 25213 and 25218(e) of the Public Resources Code. These regulations would implement, interpret, and make specific several provisions of Public Utilities Code section 8341.

NOTICE THAT A PUBLIC HEARING IS SCHEDULED:

The date set for the adoption of regulations at a public hearing is as follows:

Commission Business Meeting
April 25, 2007
Beginning 10:00 a.m.
California Energy Commission
Hearing Room A
1516 9th Street
Sacramento, CA 95814

Hearing Room A is wheelchair-accessible.

ORAL AND WRITTEN STATEMENTS

Interested persons may present oral and written statements, arguments, or contentions regarding the proposed regulations at the hearing, or may submit written comments to the Commission for consideration on or prior to April 25, 2007 by mailing them to:

Docket Unit
California Energy Commission
Docket No. 06-OIR-1
1516 9th Street, MS-4
Sacramento, CA 95814

Or e-mailing them to: DOCKET@energy.state.ca.us

Or faxing them to Dockets at (916) 654-4354

COPIES OF THE INITIAL STATEMENT OF REASONS AND THE TEXT

The Commission has prepared an initial statement of reasons for the proposed regulations. To obtain a copy of the initial statement of reasons or the express terms of the proposed regulations, please visit the Commission's website at: <http://www.energy.ca.gov/ghgstandards/index.html> or contact Gary Collord at (916) 651-9006 or by e-mail at [Gcollord@energy.state.ca.us]. Additionally, the Commission has available all the information upon which the proposed regulations are based; to obtain copies, please contact the Docket Office at the above address or by calling (916) 654-5076.

INTERNET ACCESS

The Commission maintains a website in order to facilitate public access to documents prepared and considered as part of this rulemaking proceeding. Documents prepared by the Commission for this rulemaking, including this Notice of Proposed Action, the Express Terms, the Initial Statement of Reasons, and the Economic and Fiscal Impact Statements, as well as many other documents in the rulemaking file have been posted at: <http://www.energy.ca.gov/ghgstandards/index.html>.

COPY OF THE FINAL STATEMENT OF REASONS

At the conclusion of the rulemaking, persons may obtain a copy of the final statement of reasons once it has been prepared by visiting the Commission's website at: <http://www.energy.ca.gov/ghgstandards/index.html> or contacting Gary Collord at (916) 651-9006 or by e-mail at [Gcollord@energy.state.ca.us].

POSSIBLE CHANGES

Participants should be aware that any of the proposed regulations could be substantively changed as a result of public comment, staff recommendation, or recommendations from Commissioners. Moreover, changes to the proposed regulations not indicated in the express terms could be considered if they improve the clarity or effectiveness of the regulations. If the Commission considers changes to the proposed regulations pursuant to Government Code section 11346.8, a full copy of the text will be available for review at least 15 days prior to the date on which the Commission adopts or amends the resulting regulations.

PUBLIC ADVISER

The Commission's Public Adviser's Office is available to assist any person who wishes to participate in this proceeding. For assistance from the Public Adviser's Office, please call (916) 654-4489 or toll-free in California at (800) 822-6228 or contact pao@energy.state.ca.us.

CONTACT PERSONS

Inquiries concerning all aspects of the rulemaking process, including the substance of the proposed regulations, should be directed to Lisa DeCarlo, Senior Staff Counsel, at (916) 654-5195 or by e-mail at [ldecarlo@energy.state.ca.us]. Ms. DeCarlo's designated backup contact person is Jonathan Blees, who can be reached at (916) 654-3953.

INFORMATIVE DIGEST

In September, 2006, SB 1368 (Stats. 2006, ch. 598) was enacted requiring the California Energy Commission, in consultation with the California Public Utilities Commission (CPUC) and the California Air Resources Board (CARB), to establish a greenhouse gases emission performance standard and implementing regulations for all long-term financial commitments in baseload generation made by local publicly-owned electric utilities. The legislation directs the Energy Commission to establish the performance standard as one not exceeding the rate of greenhouse gases emitted per megawatt-hour associated with combined-cycle, gas turbine baseload generation. Among other things, the implementing regulations are required to include a greenhouse gases emission performance standard and an output-based methodology for calculating and enforcing the emission performance standard.

AB 32 (Stats. 2006, ch. 488) requires CARB to adopt a greenhouse gas emissions cap on all major sources in order to reduce statewide emissions of greenhouse gases to 1990 levels. Additionally, federal regulation of emissions of greenhouse gases is likely. As a result, the electricity sector in the near future will likely have to either reduce its emissions of greenhouse gases or pay for the right to emit. Thus, there are financial risks associated with long term investments in powerplants with high greenhouse gas emissions. The broad objectives of these regulations are to internalize the significant and under-recognized cost of emissions and to reduce potential financial risk to California consumers for future pollution-control costs. Specifically, these regulations are intended to prohibit any local publicly owned electric utility from entering into a long-term financial commitment unless any baseload generation complies with the greenhouse gases emission performance standard.

On October 30, 2006, the Commission adopted an Order Instituting Rulemaking to establish a greenhouse gases emission performance standard and adopt implementing regulations. The publication of this Notice of Proposed Action initiates the formal rulemaking process.

Existing law requires the Commission, in consultation with the Public Utilities Commission and the State Air Resources Board, to establish a greenhouse gases emission performance standard for all baseload generation of local publicly owned electric utilities that is no higher than the rate of emissions of greenhouse gases for combined-cycle natural gas baseload generation. Existing law also requires that the greenhouse gases emission performance standard established by the Commission be consistent with the standard adopted by the Public Utilities Commission for load-serving entities. (Public Utilities Code, §8341(e)(1).) These regulations establish an emission performance standard of 1100 pounds (0.5 metric tons) of carbon dioxide

per megawatt hour of electricity. This standard was established in consultation with the CPUC and CARB and is the same one adopted by the CPUC.

Existing law requires the Commission to adopt regulations for the enforcement of the EPS with respect to local publicly owned electric utilities (POU). (Public Utilities Code, §8341(c)(1).) These regulations would require POUs, within 10 days of making a long-term financial commitment in a baseload facility, to certify to the Commission that such a commitment complies with these regulations and provide back-up material to support such attestation. The regulations then provide for Commission review of these compliance filings and a determination of whether or not the attestation, and the underlying facility as described in the attestation, complies with these regulations. Additionally, the Commission may open an investigatory proceeding and gather additional information if it believes that covered procurements made by a POU do not comply with these regulations.

Existing law requires the Commission, in determining whether a long-term financial commitment is for baseload generation, to consider the design and intended use of the powerplant, the electricity purchase contract, any certification received from the Commission or other permit for the operation of the powerplant, any procurement approval decision for the load-serving entity, and any other matter the Commission determines is relevant under the circumstances. (Public Utilities Code, §8341(c)(3).) These regulations provide that a determination of whether a long-term financial commitment is for baseload generation will be based on the powerplant's annualized capacity factor, which includes consideration of permits for the operation of the powerplant. The regulations would also allow consideration of other factors, including those identified in the statute, if necessary.

Existing law requires the Commission, in determining the rate of emissions of greenhouse gases for baseload generation, to include the net emissions resulting from the production of electricity by the baseload generation. (Public Utilities Code, §8341(e)(3).) These regulations would require a POU to determine a powerplant's emissions of carbon dioxide based on the facility's net emissions that result from the production of electricity.

Existing law requires the Commission to establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases for cogeneration recognizes the total usable energy output of the process, and includes all greenhouse gas emitted by the facility in the production of both electrical and thermal energy. (Public Utilities Code, §8341(e)(4).) These regulations would require a cogeneration facility's EPS-compliance determination to be based on the sum of the MWh of electricity produced and the useful thermal energy output. This ensures that the portion of energy that is not used for electricity production is taken into account in determining the facility's emissions.

Existing law requires the Commission, in calculating the emissions of greenhouse gases by facilities generating electricity from biomass, biogas, or landfill gas energy, to consider net emissions from the process of growing, processing, and generating the electricity from the fuel source. (Public Utilities Code, §8341(e)(5).) The Energy Commission has determined that biomass, biogas, and landfill gas energy powerplants using certain resources will not exceed

the EPS when the net emissions from growing, processing, and generating electricity are considered. Therefore, these regulations would find that these facilities are in compliance with the EPS.

Existing law prohibits the Commission from counting carbon dioxide that is captured from the emissions of a powerplant that is permanently disposed of in geological formations in compliance with applicable laws and regulations as emissions from the powerplant. (Public Utilities Code, §8341(e)(6).) These regulations would exclude carbon dioxide emissions that are projected to be successfully sequestered from a powerplant's calculation of greenhouse gas emissions.

Existing law requires the Commission, in adopting and implementing the greenhouse gases emission performance standard, to consider the effects of the standard on system reliability and overall costs to electricity customers, in consultation with the Independent System Operator. (Public Utilities Code, §8341(e)(7).) In formulating these regulations, the Commission consulted with the Independent System Operator and the CPUC to ensure that the EPS, and its implementation, would not have a detrimental impact on system reliability and overall costs to electricity customers. The Commission has determined such an impact is unlikely. In the event that there may be a reliability or cost impact resulting from application of the EPS to a covered procurement, a POU may petition the Commission for an exemption.

Existing law requires the Commission, in developing and implementing the greenhouse gases emission performance standard, to address long-term purchases of electricity from unspecified sources in a manner consistent with SB 1368. These regulations would allow the use of up to 15% of forecast energy production from unspecified sources in certain circumstances. The Commission determined that allowing a small amount of unspecified power was necessary to ensure that there was sufficient flexibility in the supply of electricity to allow for the firming of deliveries under contracts with specified powerplants. Allowing unspecified power in these limited circumstances, and placing a cap of 15%, ensures consistency with the intent of SB 1368.

Existing law requires the Commission, in developing and implementing the greenhouse gases emission performance standard, to consider and act in a manner consistent with any rules adopted pursuant to Section 824a-3 of Title 16 of the United States Code. These regulations would ensure that, in order to avoid any conflict with federal law, any obligation to purchase from qualifying facilities would not be affected by application of the EPS.

INCORPORATION BY REFERENCE

The proposed regulations would not incorporate any documents by reference.

SMALL BUSINESS IMPACTS

The Commission concludes that the proposed regulations would not affect small business. No small business is legally required to comply with or enforce these regulations, nor will any small

business derive a benefit or incur a detriment from implementation of these regulations. The proposed regulations only limit a POU's ability to enter into long-term financial commitments with facilities that exceed the emission performance standard. None of the POUs affected by these regulations are small businesses. The proposed regulations do not impose any indirect impacts to electricity generators because the small portion of generators with baseload powerplants that do not meet the EPS will be able to sell their electricity under current contracts, in new contracts that are less than 5 years in length, and to entities not subject to SB 1368, including those out of state. Therefore, there are no impacts to small businesses resulting from the proposed regulations.

LOCAL MANDATE DETERMINATION

If adopted, the proposed regulations would impose a mandate on local agencies. Pursuant to Government Code section 17556(d), the costs would not be required to be reimbursed because the local agencies have the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. Public Utilities Code sections 10001, 11501, 15501, and 20500 et seq. provide revenue sources for the affected entities to recoup any costs incurred through compliance with these proposed regulations.

COST/SAVINGS ESTIMATE

Implementation of the proposed regulations would result in minor costs to one state agency – the California Energy Commission. It is estimated that implementation of these regulations would cost the Commission approximately \$125,000 per year. This cost is incurred mainly in reviewing POU filings and issuing determinations. The proposed regulations could impose costs to local agencies in the amount of up to \$175,000 annually. Pursuant to Government Code section 17500 et seq. these costs would not be required to be reimbursed. There would be no other non-discretionary cost or savings imposed on local agencies and no cost or savings in federal funding to the state.

INITIAL DETERMINATION - ECONOMIC IMPACT ON BUSINESSES

The Commission has not yet completed the rulemaking process, but at this time, the Commission finds that the proposed regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The Commission and its staff are unaware of any legitimate cause and effect relationship between the proposed regulations and a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

This initial determination is based upon: (1) the fact that the limitations regarding the purchase of electricity and the reporting requirements apply only to local publicly owned electric utilities, which are local agencies; and (2) the fact that while electricity generators may not be able to sell through long-term contracts electricity from baseload powerplants that do not meet the emission performance standard, they can still sell such electricity through current contracts, through new contracts of less than 5 years' duration, or they can sell such electricity to entities that are not

governed by SB 1368.

POTENTIAL FOR ADVERSE IMPACTS ON BUSINESS AND INDIVIDUALS

The Commission's assessment is that the proposed regulations would have no potential for adverse economic impact on California business enterprises and individuals. As discussed above, the proposed regulations would have little effect on a private generator's ability to sell electricity, even from a baseload powerplant that does not meet the emission performance standard.

The Commission's further assessment is that the proposed actions would avoid the imposition of unnecessary or unreasonable regulations or reporting, record keeping, or compliance requirements. The regulations do not directly apply to private generators and they are not required to comply with any reporting, record keeping, or compliance requirements.

The Commission's assessment is that the proposed regulations would have no negative effect on the creation or elimination of jobs within the State of California. The proposed regulations would have no negative effect on the creation of new businesses or the elimination or expansion of businesses currently doing business within the State of California. Existing combined-cycle natural gas powerplants, and those that receive a Commission permit by June 30, 2007, are exempt from the EPS. Existing powerplants that do not fall under this exemption and do not meet the EPS are not prevented from satisfying current contracts and would be able to enter into new contracts of less than 5 years' duration to sell their electricity to POUs. Nor do the regulations prevent the facilities from selling their electricity to entities not covered by SB 1368 or to out of state purchasers. Because electricity generators are not completely prevented from selling electricity from baseload powerplants that do not meet the EPS, and are freely able to sell from any other type of powerplant, the proposed regulations are not expected to have any adverse impact on jobs or businesses.

The proposed regulations would not require businesses to submit any new reports.

CONSIDERATION OF ALTERNATIVE PROPOSALS

Before adopting the proposed regulations, the Commission must determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action. The Commission is not aware of any alternatives that would be as effective and less burdensome than the proposed regulations. The proposed regulations are not expected to have any effect on private persons.

IMPACT ON HOUSING COSTS

The Commission has determined, based on the nature of the proposed regulations, that they will not have a significant effect on housing costs. Restricting the ability of local publicly owned electric utilities to enter into certain long-term financial commitments could only have a very indirect and miniscule effect on housing costs. POUs will still be able to enter into short term

contracts with any powerplant and there is no indication that the limits on purchasing electricity imposed by the proposed regulations will result in any meaningful increase in cost to consumers.

COST IMPACT ON PRIVATE PERSONS AND BUSINESSES

The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. As discussed above, the regulations apply only to POUs, which are local agencies, and do not require any action from businesses or private persons.

RELATIONSHIP TO FEDERAL REGULATIONS

The Commission is aware of no comparable federal regulations or statutes establishing a greenhouse gases emission performance standard and restricting the purchase of electricity by local publicly owned electric utilities. There is a federal regulation that requires certain entities, including local publicly owned electric utilities, to purchase electricity offered by qualifying facilities. (18 C.F.R. Part 292.) The proposed regulations contain an exemption for such facilities; therefore, there are no duplications or conflicts with any federal regulation or statute. Furthermore, no federally mandated regulation or amendment is being proposed.

STATUTORY AUTHORITY AND REFERENCE

Authority: Sections 25213 and 25218(e), Public Resources Code; 8341, Public Utilities Code.

Reference: Section 54950, Government Code; Sections 25741 and 25747, Public Resources Code; Sections 8340 and 8341, Public Utilities Code.

Date:_____

JEFFREY D. BYRON
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JOHN L. GEESMAN
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